

**Fw: Blacklake continued hearing -- item 18 on 1/12/16**  
**Stephanie Fuhs** to: cr\_board\_clerk Clerk Recorder

01/08/2016 01:10 PM

Hi again,  
Additional correspondence for the Black Lake item.

Stephanie Fuhs  
Planner  
County of San Luis Obispo

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----- Forwarded by Stephanie Fuhs/Planning/COSLO on 01/08/2016 01:08 PM -----

From: Noel Heal <[noelheal@gmail.com](mailto:noelheal@gmail.com)>  
To: [sfuhs@co.slo.ca.us](mailto:sfuhs@co.slo.ca.us)  
Date: 01/08/2016 10:22 AM  
Subject: Blacklake continued hearing -- item 18 on 1/12/16

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Hi Stephanie,

Please circulate the attached letter before the Supervisors meeting, hopefully today. Sorry for the delay but none of us had very much time on this one.

- Noel Heal



County planning letter Heal-1-12-16.pdf

**Noel F. Heal**  
**Nipomo, CA 93444**

January 8, 2016

San Luis Obispo Board of Supervisors  
c/o Ms. Stephanie Fuhs, Planner  
County of San Luis Obispo

San Luis Obispo, CA 93408

Re: **Request by Blacklake Golf Resorts, LLC  
to Process a Specific Plan Amendment (LRP2014), Agenda Item 18, 1/12/14**

Dear Supervisors:

My name is Noel Heal and I have been a homeowner in the Legends development of the Black Lake community since 1999.

There are many reasons why you should deny applicant's request that is before you once again, for the fourth time in the past year. I'll focus on just three reasons:

**1. Water: Applicant's Intent-to-Serve Letters expired last June.**

- On October 22, 2014, the NCSD issued five Intent-to-Serve Letters to "Blacklake LLC."
- Each of the Blacklake Intent-to-Serve Letters contains a prominent condition – a statement to the effect that the Letter would **automatically terminate** upon "Failure of the Applicant to provide District with written verification that County application has been deemed complete within two hundred forty (240) calendar days of the date the Intent-to-Serve Letter is issued . . . ."
- The words of this plainly stated condition were taken directly from the NCSD Code of Ordinances.<sup>1</sup>
- The automatic expiration condition was agreed to as one of the "conditions contained herein," by Blacklake Golf Resorts, LLC, and was **printed above the signature of "Robin L. Rossi, Trustee, Sole Member" on each of the Letters.**
- Under the terms of the agreed conditions of issuance, the Blacklake Intent-to-Serve Letters expired on or about June 18, 2015.
- In violation of their own Code of Ordinances, the NCSD has continued, to this day, to treat the Blacklake Intent-to-Serve Letters as valid and unexpired.

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<sup>1</sup> "Termination: Intent-to-Serve letters shall automatically terminate as follows:

Failure of the applicant to provide District with written verification with two hundred forty calendar days from the date the Intent-to-Serve letter is issued, that the County has deemed the project application to be complete."  
NCSD Ordinance 3.05.070.

- The validity of the Blacklake Intent-to-Serve letters is the subject of at least one ongoing local lawsuit.<sup>2</sup>
- The right of NCSD (and others) to agree to provide water for new developments has been challenged in another lawsuit brought by three neighboring cities: Pismo Beach, Grover Beach and Arroyo Grande.<sup>3</sup>
- Applicant's latest project plan, which was sprung on residents just a few short weeks ago, is totally different from his original year-ago filing – different land parcels, different dwelling structures, and different public buildings. At the very least, the NCSD should be requiring new or revised applications for water and sewer service. The county Planning and Building department has suggested that a peer review of applicant's water estimates is called for.
- Therefore, applicant's current request for consent to amend the Black Lake Specific Plan should be denied until such time that applicant can show he has valid Intent-to-Serve letters and that sufficient water will be legally available.

**2. The proposed new Black Lake development is totally at odds with the current Black Lake Specific Plan.**

***2.1 The proposed project exceeds the cap on building density imposed by the Specific Plan and fails to meet the objectives of the Specific Plan required by the Land Use Element of the General Plan:***

- As mentioned on page I-3 of the Specific Plan, "the maximum number dwelling units that can be constructed on the 515-acre Black Lake Specific Plan area is 559." Presently there are 555 dwelling units. **Applicant wishes to add as many as 170 or more dwelling units.**
- As recited on page I-3: "The Land Use Element required that this specific plan be prepared to achieve the following objectives (quoted from the Land Use Element, South County Area Plan):
  - (b) Preservation of the scenic resources of the site.
  - (e) Site design and development providing for a recreationally oriented residential node focusing on the golf course, rather than being the nucleus of a distinct new village." (Emphasis added).
- In contrast with the above-quoted requirements of the Specific Plan and the Land Use Element, the proposed project calls for:
  - Destruction of large areas of the golf course as a scenic resource.
  - A change of focus to "resort" facilities and a new "village center" dominated by a huge five-story hotel and ancillary structures, instead of a focus on the golf course.
  - An increase in housing density by as many as 170 dwelling units (about 40%).

<sup>2</sup> *Heal v. Nipomo Comm. Services Dist.*, 15CV0539, San Luis Obispo Superior Ct.

<sup>3</sup> *In re Santa Maria Valley Groundwater Litigation*, 197CV770214, Santa Clara Superior Ct.

***2.2 Applicant's proposed hotel and proposed "rental units" are NOT allowed uses under the current Black Lake Specific Plan.***

- Applicant asserts that his proposed hotel uses are consistent with the current Black Lake Specific Plan. This is simply incorrect. In particular, applicant asserts that because "hotels and motels" are listed as an "allowable use" of recreational property, he may proceed with the hotel aspects of the plan under the current Specific Plan.
  - Section III A of the Specific Plan contains a list of "allowable" uses for Recreational land. This list comes from the Land Use Element of the General Plan and in the last paragraph on page III-1 the list includes "hotels and motels" as an "allowable" use. However, as stated in the first paragraph on page III-1, "Figure 7, the Site Plan and the Land Use Chart (beginning on page III-4) further refine this land use designation within the project." If a particular use isn't mentioned in the Land Use Chart (Table III-A), then it is not an allowed use for this particular project, even though it might be an allowable use under the Land Use Element of the General Plan.
  - This means that applicant cannot go forward with his hotel plans without first amending the specific plan to make hotels an allowed use. Applicant actually requested such an amendment prior to his March 24 application hearing, but now apparently sees that as an unnecessary step.

***2.3 Applicant's proposed "rental suites" of various kinds are still subject to the cap in dwelling units imposed by the Black Lake Specific Plan.***

- Applicant further asserts that rental suites are not subject to the cap in dwelling units prescribed by the Black Lake Specific Plan. The basis for this assertion is, apparently, that because rental suites, such as condo hotel suites, are an adjunct to the proposed hotel they are, therefore, "allowable" uses along with the hotel itself. This theory was first floated by one of applicant's attorneys and then seemed to gain traction with others who opined on the project, even to the point where even your Planning staff seem inclined to believe it.
- Quite apart from the fact that the hotel is an "allowable" use of Recreational land, but not an "allowed" use for this particular site (see 2.2 above), there is a more obvious reason why the theory is simply ridiculous. As a potential litigant over this and other project issue, I totally disagree with the notion that a rental dwelling is not a "dwelling unit" for purposes of the housing density cap of the Black Lake Specific Plan. A dwelling unit is a dwelling unit is a dwelling unit, whether it is owned in fee simple, occupied by a tenant, or rented to occupants on a daily, weekly or monthly basis. The clear intent of the Specific Plan is to limit the number of dwelling units in the Black Lake Specific Plan Area. A rental dwelling unit has no smaller effect on housing density than an occupant-owned dwelling unit. In each case, the contributions to water usage, pollution, reduction of open space and view opportunities, and increased traffic congestion, are roughly the

same, and perhaps even worse as to rental units because of a larger average occupancy per dwelling unit.

- I also note for the record that the dwelling units in the Tourney Hill development area of Black Lake were always included in the count of dwelling units subject to the cap imposed by the Specific Plan, even when they were predominantly rental units managed by the Golf Course or in conjunction with a management company. No one has ever suggested that they should be treated differently for purposes of the Specific Plan.

***2.4 Applicant's project plan is NOT in compliance with the current Black Lake Specific Plan. Applicant's highly misleading arguments to the contrary have not yet been significantly challenged.***

- In his project description, applicant argues that the current Specific Plan "anticipates new development and changes to the Golf Course consistent with the proposed CUP." He quotes with approval the following sentence from the Specific Plan: "The open space easement shall not affect the use, operation **or modification** of the Golf Course."
- The above last-quoted sentence sounds very convincing to a casual reader, until one examines the entire paragraph from which the sentence was artfully lifted (reproduced at the end of this letter as Attachment A). What applicant has done is to quote literally one word ("modification") out of context, from a paragraph that clearly conveys exactly the opposite meaning to the one ascribed by applicant to the chosen word.
  - Of course the golf course may be modified, but the word "modification" does not imply consent and blessing for the erection of buildings on the fairways and greens. In fact, quite the opposite implication is abundantly clear when the entire paragraph is read. Applicant's misleading quotation of words and short phrases totally out of their original context seems to be a recurring theme in Applicant's project description.
- By way of a second example, Applicant further asserts with respect to the same paragraph on page V-8 that "the Specific Plan recognized the **'approved relocation'** of the Golf Course." Again, it is a very persuasive quote, until one reads the entire sentence, which conveys a totally different meaning:
  - "To assure the long-term open space character of the Black Lake Planning Area and to retain the recreation orientation of the project, the landscaped areas containing the 18-hole golf course or its approved relocation and the area devoted to the 9-hole expansion shall be protected by an open space easement precluding other, non-open space uses of the golf course."
- Applicant or his counsel has cherry-picked other words and phrases from from both the Specific Plan and the Black Lake CC&Rs to support his claim that his proposal is in compliance with both documents. All of these legal "arguments," like the two described above, can be just as easily refuted.

3. **Granting Applicant's request to amend the Black Lake Specific Plan will mean almost completely gutting the current Specific Plan. This would not be a minor amendment but one that required a complete rewrite of major and significant sections of the Plan.**

Applicant's project description is the antithesis of the Black Lake Specific Plan. This is not simply a matter of changing a number in the housing density cap of the Plan, and adding "hotels" to the list of "allowed" uses. Because you would be authorizing construction of dwelling units on what you had previously declared was Black Lake's principal "visual resource," any such amendment would necessitate rewriting significant sections of the document, replacing many words and phrases with those of opposite meaning.

Chapter V (Design Standards) in the Specific Plan would be particularly hard-hit because it extolls the virtues of Black Lake's "visual resources" and particularly the visual qualities of the golf course, together with its oaks and its eucalyptus windrows.

Perhaps portions of the Specific Plan would have to be amended to say something like the following: **"The golf course is no longer considered a significant visual resource; nor is it a major component of any remaining open space area of the project. Accordingly, the golf course will no longer receive special consideration and protection. Instead, the County has decided to give priority to suitable infill projects that provide additional dwelling units of various types, built on areas that were once considered to be valuable visual resources."** I certainly hope this will not be in Black Lake's future.

Many of us Black Lake residents purchased our lots in the belief that the open-space nature of the golf course described so eloquently in the Specific Plan (and incorporated by reference into the county's General Plan) would be enforced forever, or at least for a very long time. Certainly, that is the clear intent of the Specific Plan, whether or not an open space easement was ever recorded. Your Planning staff seemed to agree, in part, with this notion in March, 2015.

As your Planning staff noted prior to the initial (March 24) hearing, the proposed resort project is inconsistent with the county's Strategic Growth Principles: "The residential, commercial and open space components of the Specific Plan are essential for the village's consistency with the County's Strategic Growth Principles, **whereas the resort is a non-essential component for this consistency. Therefore, replacing portions of the golf course with increased residential density and adding a neighborhood commercial component do not affect the Specific Plan's overall consistency with Strategic Growth Principles.**" The same staff report also notes, **"All five subdivisions have been built out** with single family units and multi-family townhouse units." If all five subdivisions have been built out, why must we even consider building more dwelling units on the same Specific Plan area? Please deny applicant's request for consent to process his application.

## **Do Black Lake Homeowners Matter?**

Mr. Rossi has made a great deal of his Black Lake “outreach” efforts. In fact, he did not make a public appearance at Black Lake between May, 2015 and mid-November. We received reports of meetings between Mr. Rossi and a Black Lake Management Association committee, but were told that nothing significant or “concrete” came out of those meetings. In mid-November Mr. Rossi announced at two homeowner meetings that he had a new and improved project plan and, by the way, he did not need homeowner approval to proceed. When I asked why on earth he was even bothering to meet with us since he didn’t need our approval, he said it was because he wanted to be “neighborly.” As it has turned out, Mr. Rossi did not reach out to us, as you asked him to, but, on sensing more than a little homeowner push-back, he reached out to find a new attorney to come up with a theory to get around our CC&Rs and your Black Lake Specific Plan. We have wasted an entire year while our property values tanked and our community was split down the middle. You have wasted taxpayer dollars on four hearings, and more to come, at which nothing has been accomplished. Some of us have grown weary of all this and just want to give in to Mr. Rossi’s threats and demands. Others of us will continue to fight because we are outraged that one property owner could violate our CC&Rs and your Specific Plan, to bail him out of a bad investment at the expense of everyone else. I believe it is past time to call a halt to these proceedings.

## **A final question as to procedure:**

A point of confusion for those of us on the outside looking in is the question of why the original request for consent to process an application for amendment of the Specific Plan, has become procedurally intertwined with applicant’s CUP application filed in November. The staff memorandum addressed to the Supervisors in advance of their January 12 meeting seems to assume that the appropriate project plan to consider is the one that accompanied applicant’s CUP application. Yet the recent correspondence between applicant and the Director and Deputy Director of Planning makes it clear that applicant must first obtain the Board of Supervisors’ consent before proceeding. So on that basis, the CUP application was filed prematurely, and yet it is now treated as part of the present application for consent for processing. I did not notice anything in the nature of a request from applicant to use his CUP project description in the consent request. Nor did I notice anything in the staff memorandum explaining how the CUP project description became part of the consent request hearing. As a result of this confusion, the status of the CUP application also remains a mystery to most, if not all of us.

Thank you for your time and consideration.

/s/ Noel Heal

***Transmitted by email***



Golf Course. The existing 18-hole public Black Lake Golf Course is a significant visual resource and a major component of the open space area of the project and will thus receive special consideration and protection. To assure the long-term open space character of the Black Lake Planning Area and to retain the recreation orientation of the project, the landscaped areas containing the 18-hole golf course or its approved relocation and the area devoted to the 9-hole expansion shall be protected by an open space easement precluding other, non-open space uses of the golf course.

This open space easement shall be for an initial period of 10 years beginning at the completion of Phase IV. On the anniversary date of the acceptance of said easement by the county, or such other annual date, as specified by the deed or other instrument described in subdivision (d) of Section 51075 of the Government Code, a year shall be added automatically to the initial term unless a notice of non-renewal is given as provided in Section 51091 of the Government Code. If a notice of non-renewal is filed, the Black Lake Specific Plan shall be brought to public hearing before the county Planning Commission for consideration of possible amendment regarding the status of the golf course. The open space easement shall not affect the use, operation or modification of the golf course. The intent of this requirement is to assure that the area is not used for non-open space or non-recreation oriented uses.

## C. LAND PLANNING

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### 1. Special Setbacks and Screening

To preserve the present rural character along the boundary roads and along the main on-site collector roads, special setbacks and screening standards are established as part of the specific plan.

The extra width easements adjacent to roadways are intended to encourage the use of imaginative design for the basic circulation systems and required street improvements by providing opportunities for such options as variations in pavement width, meandering sidewalks and use of median strips in lieu of typical county improvement standards. The easements also facilitate preservation of specimen trees and accentuate the open space and rural character of the project.

Special screening obtained by berms, landscaping and fencing is intended to improve visual quality, subdue the visual impacts of certain required facilities and enhance circulation and land use throughout the project.



**FW: Rossi Development**

**Jocelyn Brennan** to: cr\_board\_clerk Clerk Recorder

01/08/2016 01:15 PM

Adam Hill, Bruce Gibson, Caren Ray, Debbie Arnold, Elizabeth  
Cc: Ruth, Frank Mecham, Hannah Miller, Jennifer Caffee, Vicki  
Shelby, Cherie McKee

~ Jocelyn Brennan  
Legislative Assistant  
District Four  
San Luis Obispo County Supervisor Lynn Compton

Sent with Good (www.good.com)

----- Forwarded by Jocelyn Brennan/BOS/COSLO on 01/08/2016 01:15:33 PM-----

----- Original Message -----

From : "Ron Swenson" <rswenson@charter.net>  
To : <jbrennan@co.slo.ca.us>  
Cc :  
Sent on : 01/08 01:00:25 PM PST  
Subject : Rossi Development

I support the Rossi development with regards to changing the Specific Plan to allow for an increase in the number of new single family homes.

Ron Swenson

Nipomo, CA 93444